IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 173 of 2006.

Decided on : 7.11.2006.

Joginder Singh **…..Appellant.**

VERSUS

Smt. Surji Devi & ors. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. D.D.Sood, Sr. Advocate with Mr. Sunil Awasthi, Advocate.**

For the Respondents : **Mr. Kuldip Singh, Senior Advocate with Mr. Karan Singh Kanwar, Advocate.**

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. This appeal by defendant Joginder Singh, is directed against the order dated 25.9.2006, passed by the District Judge. The grievance is that the order is bad, inasmuch as there was no need for having remanded the matter for deciding the same afresh after appointing a Local Commissioner for demarcation of the suit land and obtaining his report, when other evidence on record was sufficient to decide the question of fact involved in the matter.

3. Respondents-plaintiffs filed a suit, seeking permanent prohibitory injunction, restraining the appellant- defendant from doing

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Whether the reporters of the local papers may be allowed to see the Judgment?

the lopping of a tree claimed to be standing on their land. Defendant took the plea that the tree stood on his adjoining land. The trial court dismissed the suit after trial, holding that the tree did not stand on the respondents' land. Respondents went in appeal to the court of District Judge, who remanded the case with a direction to the trial court to appoint some Local Commissioner for carrying out demarcation on the spot and to report on the basis of the result of the demarcation, whether the tree stood on the land of the respondents or the adjoining land of the appellant. Trial Court appointed a Local Commissioner. Objections were filed against that report by the appellant. The trial court while disposing of the matter second time, rejected the report of the Local Commissioner and passed the final judgement dismissing the suit. Plaintiffs again went in appeal to the court of District Judge. The District Judge has remanded the case with the observation that when there was an order that a Local Commissioner be appointed and the matter be decided on the basis of the result of the demarcation to be carried out by the Local Commissioner, and the trial court had though appointed a Local Commissioner but then rejected his report, it was imperative to have appointed another Local Commissioner, so that the earlier order of remand was complied with in letter and spirit. It is against this second order of remand that the present appeal is directed.

4. I have heard the learned counsel for the parties. Now when there was a specific and definite order by the District Judge in the earlier appeal that a Local Commissioner was to be appointed for delimitation of the boundary of the adjoining properties of the parties

and the matter was to be decided according to the report of the Local Commissioner and even though a Local Commissioner was appointed but when his report had been rejected, it was imperative for the trial court to have appointed another Local Commissioner. The trial court having not done so, no fault can be found with the impugned order of remand.

5. For the foregoing reasons, the appeal is dismissed.

November 7, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**